

SUBCOMMITTEE NO. 4

Agenda

Michael J. Machado, Chair
Robert Dutton
Christine Kehoe



***Senate Budget and Fiscal Review Subcommittee #4 on State Administration,
General Government, Judicial and Transportation***

March 12, 2008

9:00 a.m.

Room 113

Overview of California's Criminal Justice System

1. *Kara P. Dansky*, Executive Director
Stanford Criminal Justice Center
 - Overview and History of California's Parole System
2. *Barry Krisberg*, President
National Council on Crime and Delinquency
 - Research on Effectiveness of a Community Corrections Model

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<u>Item</u>	<u>Department</u>	<u>Page</u>
5525	California Department of Corrections and Rehabilitation	2
	2008-09 Governor's Budget Summary	3
	Parole Policy Background and Evaluation.....	7
	California's Parole Policy	9
	Governor's Population Management Proposals.....	13
	2008-09 LAO Criminal Justice Alternatives.....	16
	Other Options	21

State Administration—General Government—Judiciary—Transportation

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5525 California Department of Corrections and Rehabilitation

Background. The California Department of Corrections and Rehabilitation (CDCR) is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees, and is responsible for the apprehension and re-incarceration of those parolees who commit parole violations. The department also sets minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides grants to local governments for crime prevention programs.

The department operates 33 adult prisons, including 11 reception centers, a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates eight juvenile correctional facilities, including three reception centers. In addition, CDCR manages 13 Community Correctional Facilities, 44 adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and 202 adult and juvenile parole offices.

In 2005, the CDCR was created pursuant to the Governor's Reorganization Plan 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency were consolidated into CDCR. The departments consolidated into the current CDCR are: the Youth and Adult Correctional Agency; the California Department of Corrections; the California Youth Authority; the Board of Corrections; the Board of Prison Terms; and the Commission on Correctional Peace Officers' Standards and Training.

2008-09 Governor's Budget Summary

Overall Budget Summary. The Governor's budget proposal includes \$10.1 billion (\$9.8 billion General Fund) for CDCR operations in 2008-09. This is only \$14 million, or less than 1 percent, above the revised estimated expenditure levels in the current year.

The department's budget includes increased spending for projected increases in the prison and parole populations; inmate and parolee rehabilitation programs; responses to federal court cases relating to inmate medical and dental care and other issues; peace officer recruitment and training; and inflation adjustments.

This additional spending is largely offset by the Governor's proposed budget reductions related to reducing the inmate and parolee populations through (1) release of certain inmates from prison up to 20 months early and (2) summary parole supervision.

Figure 1 shows the total operating expenditures estimate contained in the governor's budget for the current year and proposed for the budget year. The large increase in Administration expenditures is mainly due to one-time expenditures related to a major effort to update the department's information technology infrastructure.

Figure 1: Total Expenditures for CDCR Operations

Summary of Expenditures				
(Dollars in Millions)		2007-08	2008-09	Change
				Amount Percent
Program				
Administration	\$310	\$463	\$153	49.4
Juvenile Institution and Parole	580	554	-26	-4.5
Adult Institution and Parole	8,761	9,006	245	2.8
Board of Parole Hearings	111	118	7	6.3
Corrections Standards Authority	308	302	-5	-1.7
Community Partnerships	12	14	2	13.9
Subtotal		\$10,081	\$10,457	\$375 3.7
Budget Reduction Proposals		-18	-379	-361 0.0
Total		\$10,063	\$10,078	\$14 0.1

Adult Inmate and Parolee Population Estimates. The Governor's budget is based on projections that the average daily inmate population and adult parolee population in the current year is higher than anticipated in the 2007 Budget Act. The Governor proposes \$14 million

General Fund to address this growth in the current year. Estimates for the adult inmate and parolee populations in the budget year are also estimated to grow beyond the current year levels. The Governor proposes \$77.2 million General Fund to fund growth in the adult inmate and parolee population for 2008-09.

The 2008-09 average daily adult inmate population is anticipated to be 177,021 and the average daily adult parolee population is anticipated to be 133,061, which is 1.7 percent and 2.9 percent higher than the estimate in the current year, respectively. The estimated inmate population for the current year is 173,993.

The actual inmate population is on track to be significantly less than what is projected for the budget year. As of the end of February, CDCR has 170,090 inmates, which is fewer than what they had at the start of the current fiscal year. The actual parolee population is also on track to be about 2,000 fewer than the projection in the current year. These numbers, as in the past, will be adjusted in the May Revision for both the current year and the budget year.

Impact of Budget Proposals on Population Estimate. These population estimates do not reflect the Governor's two policy proposals—20-month early release and summary parole. While the budget does include estimates of the direct fiscal impacts of these policies on the cost of prison and parole operations, the reduction in the inmate population is not reflected in the department's bed plan. This means that it is unclear whether contracted beds are, in fact, necessary given the number and security level of offenders that will remain in the prison system.

These population estimates also do not reflect the Governor's proposals to reduce funding for Proposition 36 and drug court allocations to counties. Because Proposition 36 and drug court programs allow offenders to receive drug treatment in lieu of their incarceration in prison, the proposed reduction in spending for these programs would likely increase the prison population in the budget year.

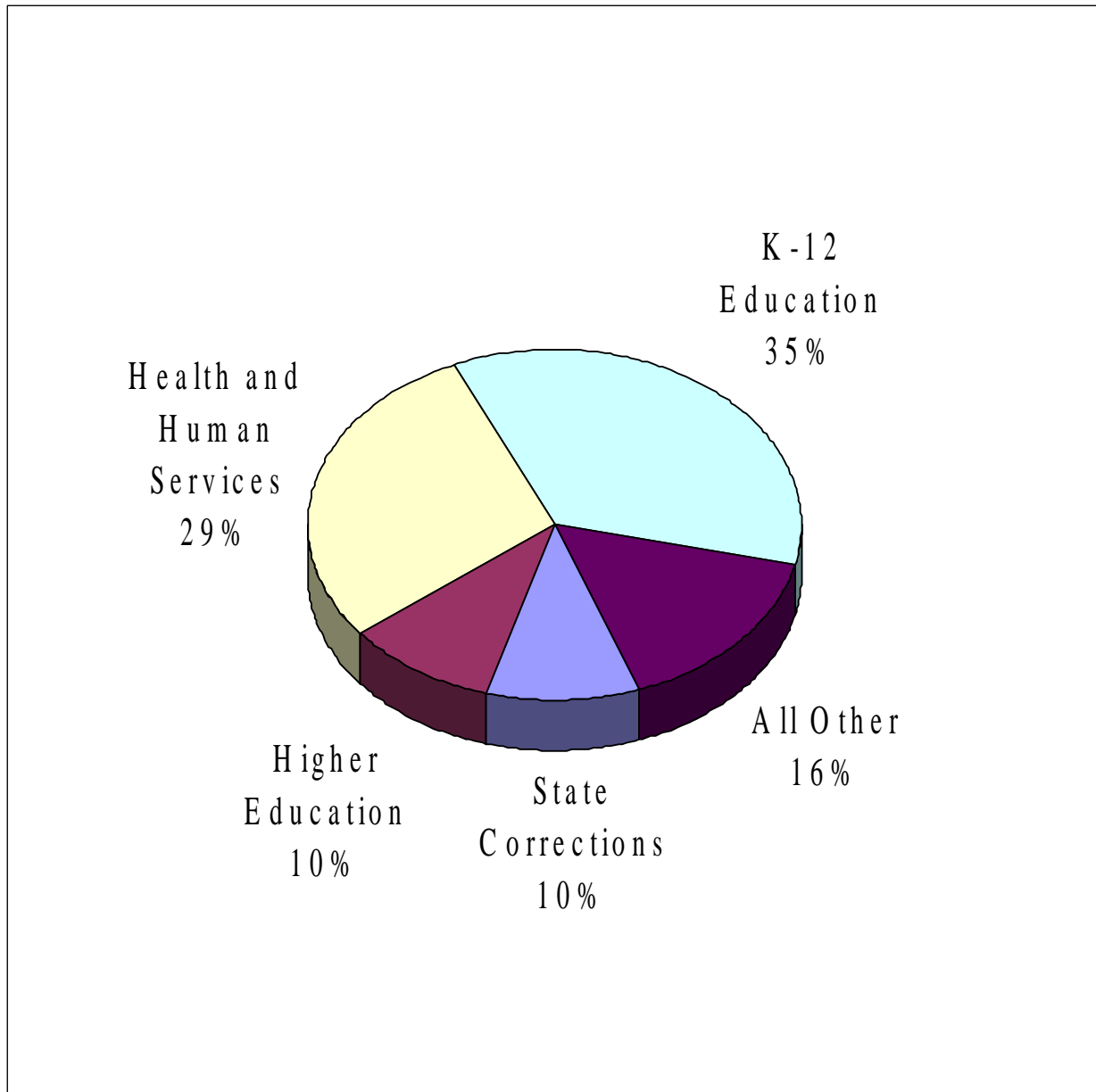
Correcting Inmate Release Dates. Recent press and a lawsuit have raised awareness of a problem CDCR has had in correctly calculating inmate release dates. The lawsuit alleges that up to 33,000 inmates release dates have been miscalculated which has resulted in CDCR incarcerating individuals past their appropriate release date.

This problem has arisen mainly due to a shortage of trained case records staff at prisons around the state, which has resulted in a backlog of cases. The department has indicated that eliminating this backlog could reduce as many as 600 beds in the budget year. The department plans to use overtime in the current year to help address this backlog, but will most likely need to hire additional staff to address this problem in the short term until a more automated system can be put in place.

State Corrections in State Budget Context. The Governor has proposed General Fund spending of \$101 billion for 2008-09, a decrease of 2.3 percent. The CDCR accounts for approximately 10 percent of total state spending. The Governor's budget proposes to expend about the same funding level on CDCR operations as it does on all higher education (CSU, UC, and Community Colleges).

Figure 2 shows proposed state spending for CDCR versus other major state programs.

Figure 2: Proposed Total State Spending by Major Program Area, 2008-09

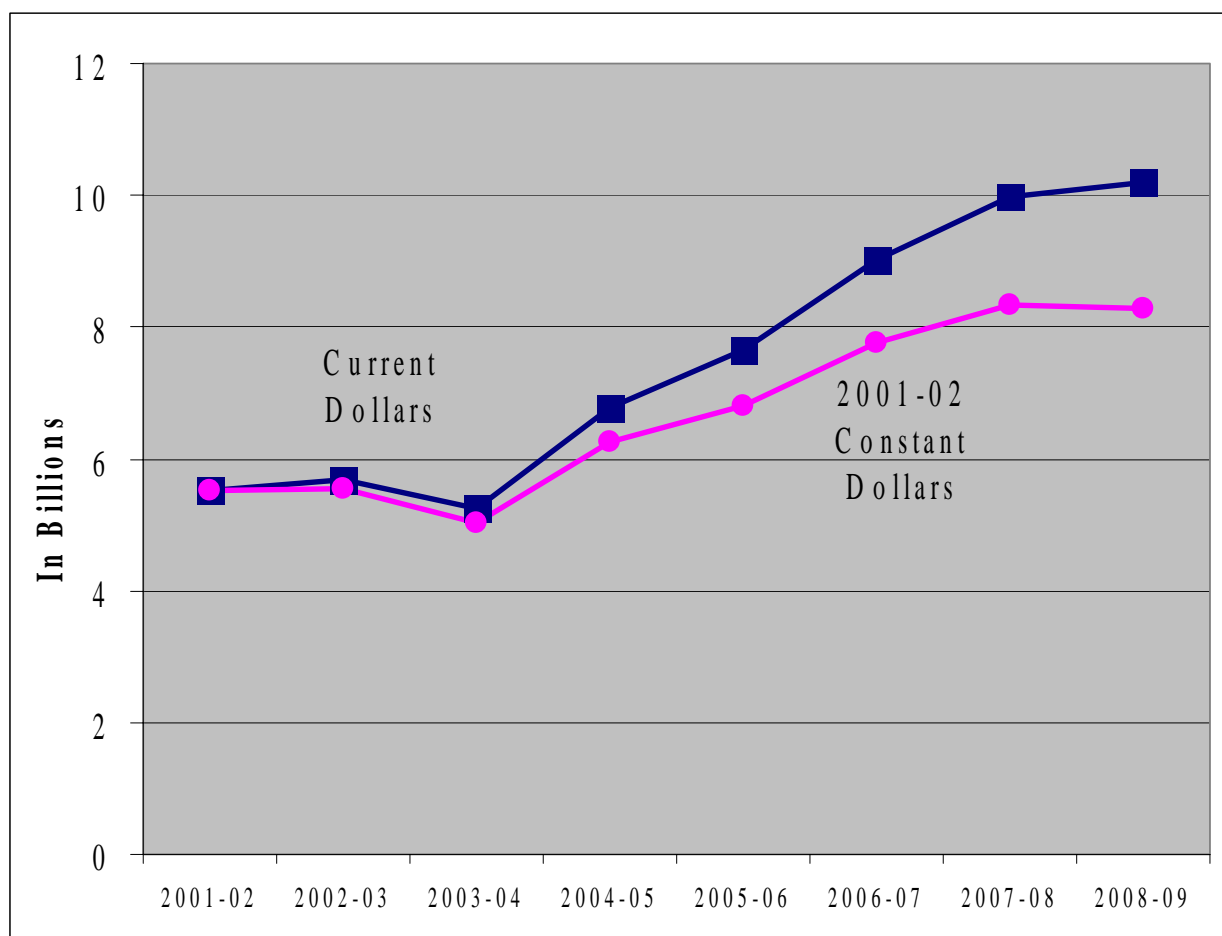


CDCR Budget Historical Trend. General Fund expenditures to support CDCR operations have grown by \$4.7 billion, or 84 percent, between 2001-02 and 2008-09, an average annual increase of 9 percent. Expenditures increased over this time mainly due to (1) increased labor costs to operate the state corrections system and (2) court-ordered expansions and improvements of inmate services, particularly for inmate health care services.

Even after adjusting for inflation (constant dollars), General Fund expenditures to support CDCR operations have increased 50 percent from 2001-02 through 2008-09, which is the equivalent of a \$2.8 billion increase in purchasing power.

Figure 3 shows the growth in CDCR's budget over the past seven years in current dollars and after adjusting for inflation.

Figure 3: Growth in CDCR Expenditures Over Time



Parole Policy Background and Evaluation

History of Parole. For nearly a century, parole was an integral part of the United States' approach to sentencing and corrections. In the model of indeterminate sentencing that dominated in the 20th century, parole played three critical roles.

- First, the parole board would determine the actual length of the prison sentence. Under indeterminate sentencing a judge would sentence an offender to a prison term, specifying a minimum and maximum term. The parole board would then decide on a case-by-case basis whether a prisoner was ready to be released into a community.
- Second, parole agencies would supervise recently released offenders in the community for the remainder of their sentence. Under an indeterminate sentencing model, a prisoner released to parole is still serving a criminal sentence, in the community rather than in prison, and must abide by a number of conditions established by a parole board at the time of release.
- Finally, parole officers and parole boards were authorized to revoke a parolee's conditional liberty and return him or her to prison if a parole officer determines that the parolee has failed to observe a condition of his or her release.

Under the indeterminate sentencing philosophy, the judicial and executive branches of government exercise substantial discretion over the length of a prison sentence and period of parole supervision.

In the late 1970's there was a nation-wide movement towards a determinate sentencing system in a movement referred to as "Truth in Sentencing". There was a considerable amount of concern at the time that offenders were not spending enough time in prison and that the primary goal of sentencing should be punishment and retribution as opposed to rehabilitation.

In 1977 California moved from an indeterminate sentencing system to a determinate sentencing system. The movement towards determinate sentencing restricted the role of the Judiciary in setting penalties for offenders. The reform also significantly reduced reliance on parole boards by switching to a mandatory release system, thereby restricting the role of the Executive Branch. Under determinate sentencing, the Legislature became more powerful in determining sentencing policy.

Parole Definitions. There are three ways in which inmates are released from prison in the United States. Most states use a mix of the following three types:

- **Mandatory Release.** Mandatory releases occur when a prisoner is released after he or she has served his original sentence, less any accumulated good time credit. Inmates released under a mandatory release system have not received a determination of fitness to return to the community from a parole board or other authority. This is the primary mode of release under a determinate sentencing system like the system in California.
- **Discretionary Release.** Discretionary releases involve a parole board or other authority making a determination of fitness to return to the community. This determination could be made before a prisoner has served his or her full sentence, and would result in the offender serving the remainder of his or her sentence under community supervision. This is the primary mode of release under an indeterminate sentencing system.

- **Unconditional Releases.** Unconditional releases leave prison after serving their sentence and exit prison without any conditions of release or community supervision. In other words, unconditional releases are not placed on parole.

Evaluation of Parole Programs. A recent study conducted by the Urban Institute followed three cohorts of offenders with similar demographics and criminal histories. Each cohort represented offenders that were released from prison to parole by way of mandatory release, discretionary release, and those that were released unconditionally, without parole supervision. The study found that parole supervision had little effect on re-arrest rates of released prisoners.

The study found that mandatory parolees, who account for the largest share of released prisoners in the United States and the vast majority of parolees in California, fare no better on supervision than similar offenders released without supervision.

The study found that parole supervision did benefit certain offenders. For example, females, individuals with few prior arrests and technical violators were less likely to be rearrested if supervised after prison. However, of the largest groups of released prisoners—male drug, property, and violent offenders—only property offenders released to discretionary parole benefited from supervision. This study suggests that the overall effect of parole supervision is minimal for the majority of offenders. In California we expend approximately \$1.3 billion on our parole program, on average just over \$10,000 per parolee.

This study confirms what national parole experts have long suspected—that the current system of parole supervision is generally ineffective. Research has suggested many different reasons for why parole, as typically implemented, is not as effective as it could be. Some of these reasons include the following:

- Parole supervision for most offenders is really quite minimal—parolees may meet with their parole agent for about 15 minutes once or twice a month.
- Parole officers are often located far from the neighborhoods where parolees reside and may not understand the situational context that geographically oriented supervision could provide.
- The transition from a service orientation to a surveillance oriented strategy centered on monitoring behavior and detecting violations may be reducing the effectiveness of parole. Prior studies have shown that surveillance alone will not invoke change in offender behavior.

Despite the disappointing evidence on the relative ineffectiveness of parole supervision, it is important to note that unconditional releases were just as likely to re-offend upon release. Therefore, the most important outcome of a study like this is to rethink and revise parole supervision as we know it to produce better public safety outcomes.

California's Parole Policy

California's Current Parole System. California, for the most part, has a *mandatory* release system. This means that an offender is released after he or she has served his original sentence, less any accumulated good time credit. Mandatory releases have not received a determination of fitness to return to the community from a parole board or other authority. In California it is current practice to place all offenders on parole for a three-year period. This system was adopted after California switched from an indeterminate to determinate sentencing system in the late 1970s.

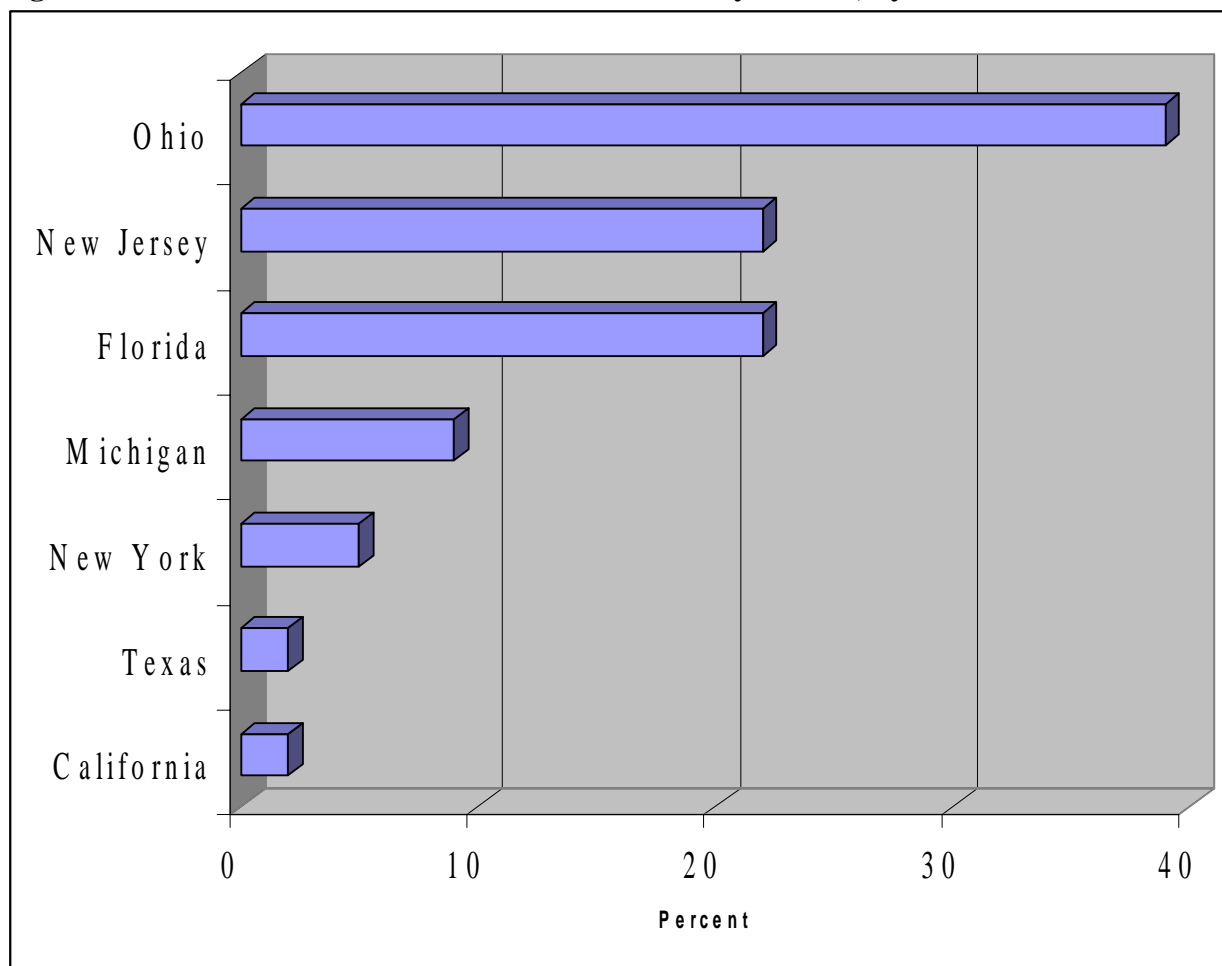
Offenders sent to prison on a life-term are the only prisoners subject to *discretionary* release, which means that a determination of fitness is required by the Board of Parole Hearings and the Governor before the offender can be released. In these cases the Board of Parole Hearings makes the final determination of the conditions and length of the parole period. In the case of murder, an offender may be on parole for life.

Currently, the majority of parolees in California are supervised at a 70:1 parolee to parole agent ratio. However, many parolees considered low-risk are supervised at an over 100:1 parolee to parole agent ratio. This means that realistically most parolees see their parole agent for 15 minutes every other month or less frequently. The Division of Adult Parole Operations also has several specialized caseloads that receive a higher level of supervision, including sex offenders and second-strike offenders. These offenders are being supervised on a 40:1 parolee to parole agent ratio.

How California Parole Practices Differ from Other States. California's parole policies are considerably different from other states and overall California chooses to supervise a much broader class of offenders on parole than most other states and makes virtually no unconditional releases.

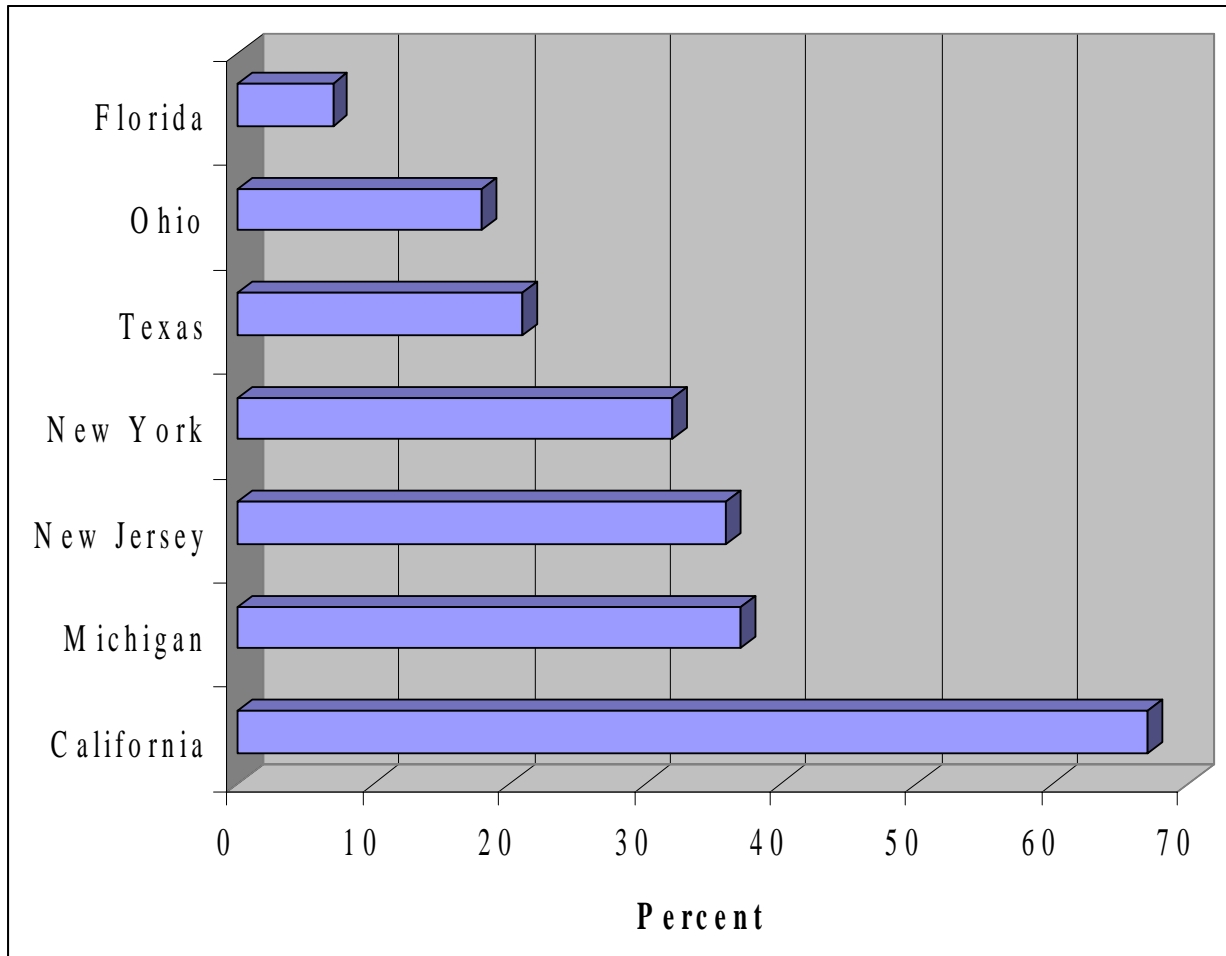
- **California Has a Low Number of Unconditional Releases.** Figure 4 illustrates that California makes virtually no unconditional releases from state prison. In other words, nearly all inmates released from prison in California are placed on parole. Figure 4 shows only a sampling of states, but when compared to all of the other states, California made the fewest unconditional releases.

Figure 4: Share of Prisoners Released Unconditionally in 1994, by State



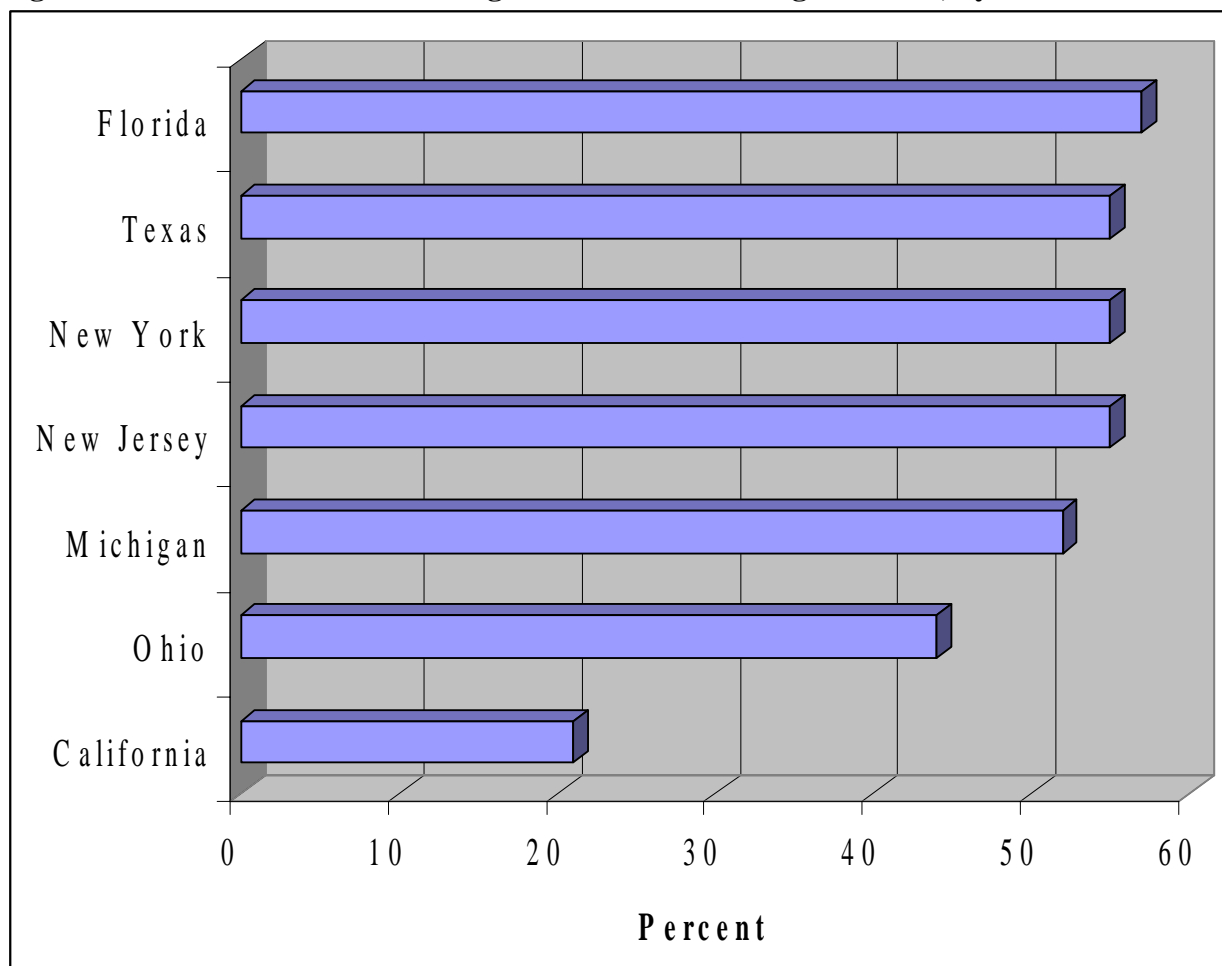
- **California Has Highest Percentage of Parole Violators in Prison.** California overwhelmingly returns more parolees to prison than any other state. In 1999 parole violators accounted for over 67 percent of state prison admissions in California, which was the highest rate nation-wide. Figure 5 shows how the percentage of prison admissions that are parole violators varies significantly across the United States.

Figure 5: Percent of Parole Violators among Admissions to State Prison in 1999, by State



- **California Has One of the Lowest Success Rates for Parolees.** California also has one of the lowest success rates for parolees defined by the percentage of offenders that are successfully discharged from parole. On average, California only discharges about 20 percent of offenders successfully from parole. There are many variables that make it difficult to compare rates of discharge across states, but that being said the rest of the nation discharges successfully a much higher proportion of offenders from parole (more than 50 percent on average) than California. Figure 6 shows the range of different success rates as defined by the percentage of offenders that are successfully discharged from parole.

Figure 6: Percent Successful Among State Parole Discharges in 1999, by State



Governor's Population Management Proposals

Summary. The Governor has proposed addressing the projected budget shortfall in the budget year by adopting a 10 percent across-the-board reduction to most all programs in state government. In order to meet this 10 percent reduction target in CDCR the Governor is proposing two policy changes—20-month early release and summary parole—that would significantly reduce the state's inmate and parolee populations. The Governor is not proposing any other reductions to the department's budget. The department estimated that, if implemented by March 1, 2008, these proposals would generate \$354 million in estimated savings in the budget year and \$758 million in 2009-10.

Under the Governor's proposal, CDCR would not realize a 10 percent reduction to its operations until 2009-10. Since the Legislature has not acted on these policy changes, the DOF estimates that budget year savings would be significantly diminished—well over \$100 million less in savings in the budget year.

1. Twenty-Month Early Release

Governor's Proposal. The Governor is proposing releasing certain non-violent, non-serious, non-sex offenders up to 20 months early. Inmates with prior serious or violent crimes and strikes would not be eligible for early release. Inmates that had committed serious crimes in prison that were subject to administrative review, but not prosecuted would also be excluded. In addition, offenders that committed over 20 additional crimes categorized as non-violent non-serious would also be excluded. Those offenders eligible for early release would be placed on summary parole.

The Governor is requesting legislation to implement this policy change. If legislation had been enacted by March 1, 2008, it would have resulted in \$4.3 million in savings in the current year. These savings would grow to \$256.4 million in the budget year and \$526.7 million in 2009-10. The department estimates that this policy change would ultimately reduce the average daily population in state prison by over 26,000 inmates.

The department estimates that there would be one-time costs of \$600,000 to review inmate files to determine if they are eligible for early release. The department also estimates that \$1.5 million is needed in the current year and \$900,000 ongoing to augment the case records unit to process the increased numbers of inmates that will be eligible for parole. The Governor proposes legislation to allow the department to redirect internal resources to cover the costs needed to implement early release in the current year.

LAO Identifies Gap Created by Governor's Proposal. The LAO has identified a gap in the criminal justice system that would be created by the Governor's early release proposal. Specifically, local corrections will continue to supervise misdemeanants and many low-level offenders, while prisons will continue to house the most serious felons. However, under the Governor's proposal about 63,000 offenders would essentially go unsanctioned, serving little or no prison time. This is because many prison terms for non-violent offenses are less than 20 months, which would make some offenders immediately eligible for release under the

Governor's proposal. Consequently, under the Governor's proposal it is possible that certain offenders sentenced to prison would receive less punishment and supervision than those offenders sentenced to local county jails and probation.

The LAO also finds that this proposal would have the unintended consequence of reducing the incentive for some low-level offenders, at the time of their sentencing, to elect to participate in diversion programs such as Proposition 36, drug courts, and mental health courts. Currently, a major incentive for many felons to participate in these programs is that the alternative to participation is incarceration in state prison.

The LAO also identifies that the administration has not developed an implementation plan for addressing the many changes to operations that would occur if the early release proposal was adopted. For example, if this proposal was adopted, the state may not need the additional 16,000 infill beds approved as part of Chapter 7, Statutes of 2007 (AB 900, Solorio). The department may also need to make significant changes to the programming and contracts, since many programs are targeted to meet the needs of the population that would be impacted by the early release proposal.

The LAO also notes that the budget the Governor has submitted for CDCR is inconsistent with the population management proposals the Governor has also proposed. For example, the large population reduction resulting from this proposal would presumably result in a reduced need for correctional officer training, parole revocation caseloads, and other things. However, the Governor's budget does not reflect a reduction in these efforts and conversely actually argues many of these areas as part of the Governor's budget.

Staff Comments. Staff finds that the Governor's early release proposal is a cumbersome and costly way of essentially changing the sentences for certain crimes. Staff finds that changes in sentencing could reach the same effect at a lower cost and would not create the gap in the criminal justice system identified by the LAO. The LAO has also made this conclusion and has suggested as an alternative to early release, changes in sentencing law to make some "wobblers"—crimes that can be sentenced as either felonies or misdemeanors—punishable as misdemeanors only. (This proposal is discussed at more length later in this agenda.)

2. Summary Parole

Governor's Proposal. The Governor is proposing that certain non-violent, non-serious, non-sex offenders not be supervised while on parole, but instead be placed on summary parole after serving their prison term. This proposal would eliminate the option of returning an individual to prison using the administrative process of parole revocation. However, individuals on summary parole would still be subject to search and seizure by any peace officer, as well as drug testing by any peace officer. Only inmates with no prior serious, violent, or strikeable offenses would be eligible for summary parole.

The Governor is requesting legislation to implement this policy change. If legislation was enacted by March 1, 2008, it would have resulted in \$13.6 million in savings in the current year. These savings would grow to \$97.9 million in the budget year and \$231.5 million in 2009-10.

The department estimates that this policy change will ultimately reduce the average daily parole population by over 28,000 and the average daily population in state prison by over 8,600.

The department estimates that there would be one-time costs of \$10 million in the current year to review case files of offenders to determine if they are eligible for summary parole. The department also estimates that \$4.1 million would be needed in the current year, and ongoing, for additional case records positions to manage the summary parole population. The Governor proposes legislation to allow the department to redirect internally to cover the costs needed to implement the summary parole proposal in the current year.

LAO Finds Merit to Summary Parole. The LAO finds some merit to the Governor's summary parole policy. The LAO indicates that this practice is similar to the practice already in place in many other states where certain low-level offenders do not serve any time on parole after completing their prison term. However, the LAO does not recommend the Governor's proposal, but instead recommends adopting a system of earned discharge from parole. (This proposal is discussed at more length later in the agenda.) This system would permit parolees to be discharged from parole early if they had demonstrated that they had successfully reintegrated into the community.

Furthermore, in the past, the LAO has recommended direct discharge for some low-level parolees as a way to minimize risk to public safety. For example, in the LAO's *1990-91 Analysis*, the LAO indicated that certain low-level parolees could be direct discharged from state prison and these savings could be used to supervise high risk sex offenders more intensely.

Expert Panel Recommends Targeted Direct Discharge. In 2006-07 the Legislature funded an effort to convene an Expert Panel made up of corrections officials and academics from around the country. This Expert Panel delivered a report to the Legislature in the late summer of 2007. The Expert Panel recommended in its report that certain non-violent, non-serious, non sex-offenders that were also determined to be low-risk based on a validated risk assessment be direct discharged from prison. The Expert Panel recommended that CDCR establish a stabilization track for these offenders that would allow these offenders to receive voluntary services in relation to housing, job placement, and referrals to other needed social services. The Expert Panel found that this policy would have minimal impact on public safety.

Furthermore, the Expert Panel found that several studies show that imposing supervision conditions on those who are not likely to re-offend may actually increase their recidivism rates.

Staff Comments. Staff finds that California's current parole policies differ significantly from many other states in that we do not make unconditional releases from state prison. Actually, a majority of other states make considerably more unconditional releases. Furthermore, these states do not appear to have worse outcomes than California in terms of recidivism. For example, Ohio makes 20 times the unconditional releases California does and has a lower recidivism rate than California.

2008-09 LAO Criminal Justice Alternatives

Summary. The LAO in its 2008-09 Perspectives and Issues has offered an alternative budget for the Legislature's consideration. In contrast with the Governor's across-the-board reduction approach, the LAO recommends that the Legislature make more targeted reductions, eliminate or modify ineffective and nonessential programs, and consider adding ongoing revenue solutions. As part of the LAO alternative budget the LAO has suggested various proposals in the criminal justice area. The major components of the LAO's alternative budget for criminal justice are:

- **Parole Realignment.** The LAO recommends a major realignment of responsibility for supervision of low-level criminal offenders released from state prison.
- **Sentencing Changes.** The LAO recommends sentencing changes that would make certain "wobblers"—low-level drug and property crimes—punishable only by county jail or probation.
- **Other Savings.** The LAO accounts for various other savings related to slower growth in the inmate population and delays in implementing new programs, like Jessica's law, implemented in the current year.
- **Local Assistance Programs.** The LAO recommends reducing and eliminating various criminal justice local assistance programs that do not have demonstrated results or does not serve a statewide purpose.

In this agenda we will focus on the public policy changes proposed by the LAO. These are the first two bullets listed above. The other proposals will be discussed more thoroughly at a future hearing.

1. Parole Realignment

LAO Proposal Summary. The LAO has recommended, as part of its alternative budget package, the realignment of responsibility for the supervision of lower-level offenders released from state prison. This proposal would have the state allocate nearly \$500 million to local law enforcement to cover the costs of this proposal.

As mentioned earlier in this report, the state is supervising on parole virtually all offenders released from prison, including over 70,000 offenders that have been convicted of property and drug offenses. Under the LAO's alternative, responsibility for supervising these lower-level offenders would be shifted from the state to the counties. The county would also be responsible for incarcerating these offenders if they commit violations of their probation conditions. Specifically, the LAO proposes shifting offenders whose current conviction is a property or drug offense. Figure 7 shows the offenses for which offenders would be transferred to probation supervision under the LAO's proposal.

Figure 7: Parolees Proposed for Realignment to Local Probation, June 30, 2007

Current Offense	Number of Parolees
<i>Property Offenses</i>	
Second degree burglary	7,482
Vehicle theft	7,128
Petty theft with a prior theft	6,159
Receiving stolen property	4,920
Forgery/fraud	4,104
Grand theft (over \$400)	3,736
Other property offenses	1,146
<i>Subtotal, Property Offenses</i>	<i>34,675</i>
<i>Drug Offenses</i>	
Drug possession	19,046
Drug possession for sale	12,057
Marijuana possession for sale	1,280
Marijuana sales	538
Other marijuana crimes	179
Hashish possession	49
<i>Subtotal, Drug Offenses</i>	<i>33,149</i>
Driving under the influence	3,539
Total, All Offenses	71,363

The LAO proposal would significantly increase local probation caseloads and costs, but it would also provide significant additional resources for local probation and public safety programs. The LAO estimates that the proposal would result in a 25 percent increase in funding for local probation and a 20 percent increase in probation caseloads. Therefore, the LAO suggests that counties would receive significant new revenues with which to manage these offenders.

The LAO proposes funding this realignment from a reallocation of waste and water enterprise special district property taxes, city Proposition 172 sales taxes, and vehicle license fees retained by the Department of Motor Vehicles for administrative purposes.

Current System is Duplicative. The LAO finds that under the current system local probation and state parole fulfill very similar functions. Both systems supervise offenders in the community, monitor their compliance with state laws and other conditions, as well as provide programs and services designed to reduce recidivism. Furthermore, there is a lot of overlap in the type of offenders both state parole and local probation currently supervise. Generally judges have significant discretion on whether to send felons to state or local corrections and different offenders that commit the same crime may serve their sentence at either the state or local level.

Furthermore, most of the offenders on parole and probation have the same general needs, substance abuse treatment, employment, and treatment to address criminogenic behavior. Currently both state parole and local probation have separate programs that they use to try and address the needs of the offenders. This leads to duplication of effort and even competition for valuable community resources.

The LAO also finds that this duplicative system does not allow for economies of scale that could reduce the overall costs of supervision and providing services to these offenders.

Local Control Would Yield Better Outcomes. The LAO is recommending this realignment of parole because they find that local control would yield better outcomes for these offenders and public safety. This is not an issue of whether parole officers are less effective than their counterparts in probation. Instead, under realignment, the LAO finds that counties would have greater incentives than they have now to intervene and treat offenders because they would pay the costs of incarcerating offenders that commit violations of their probation conditions. Currently, parole struggles in jurisdictions across the state to site programs for parolees and to get parolees services in the community. Local governments control the permitting of facilities and access to some services for parolees. However, they do not have direct financial incentives to ensure these treatment facilities and services are established and accessed, because if the offender relapses, he or she can always be sent back to prison which is paid for by the state.

Furthermore, some county funding streams such as Proposition 63, which provides funding for county mental health programs excludes parolees from receiving services provided by these funds. Obviously, this makes it extremely difficult for parole agents to access mental health services for parolees in the community. On the other hand, probationers are not excluded from accessing these resources.

The LAO also finds that parole realignment would encourage more small-scale experimentation at the local level. Because local government is responsible for a number of different programs (substance abuse treatment, mental health, education, etc.), they would be more likely to try different models for intervention and treatment of offenders.

Furthermore, providing funding to the counties would enable them to more effectively develop a more robust continuum of services, including investments in prevention and intervention programs that might yield significant improvements to public safety in the longer term.

Reduces “Churning” in State Prison System. The state prison system is not designed to address the needs of offenders that have relatively short sentences to serve. When an offender enters state prison he is sent to a Reception Center. At the Reception Center the inmate goes through a classification process to determine what security level and where he or she should be housed in the state prison system. The offenders also get medial and mental health screenings, as well as reading level tests while at the Reception Center. These tests all take time and processing times at Reception Centers can be as long as a year, or more, especially when the prisons are overcrowded. It is not uncommon that an inmate will spend his or her entire sentence in the Reception Center. Since Reception Centers are set up just to process inmates and send them out

to a “main-line” institution there are few programs or activities at the Reception Centers that would contribute to rehabilitation of the inmate. This is especially true for parole violators that are sent back to state prison for a relatively short period of time.

The LAO finds that the parole realignment will reduce the “churning” that currently happens due to the large volume of offenders sent to state prison for a relatively short-term. The state prison system is not well adapted to operate like a county jail.

Staff Comments. Staff has been informed by some local government entities that this proposal would reduce public safety because probation departments in some jurisdictions are not armed like parole officers. Staff finds that state law permits local jurisdictions to allow probation officers to be armed and this issue remains a local control issue under the LAO proposal. Furthermore, staff finds that whether or not probation officers are armed has little to do with reducing recidivism. Numerous studies have found that surveillance alone does not affect offender behavior and improve public safety.

2. Sentencing Changes

LAO Proposal. The LAO recommends that a better alternative to the Governor’s early release proposal is to change sentencing law to make “wobblers”—crimes that can be sentenced as felonies or misdemeanors—punishable as misdemeanors only. The LAO finds that this is a better option for achieving significant budget savings while minimizing the impact to public safety.

The LAO has identified 10 “wobbler” crimes that could be converted to misdemeanors resulting in annual savings of approximately \$690 million. The crimes identified by the LAO include the following:

Offense Category	Inmate Population	Average Time Served In Months	Annual Cost of Incarcerating Inmate Groups
Drug possession	7,742	17	\$170
Vehicle theft	5,143	17	113
Petty theft with a prior theft	5,174	18	114
Receiving stolen property	4,077	15	90
Grand theft (over \$400)	2,905	17	64
Forgery/fraud	2,888	17	64
Driving under the influence	2,375	17	52
Other property crimes	903	15	20
Other drug crimes	188	24	4
Hashish possession	33	12	1

The LAO notes that while their proposal targets offenders whose current offense is relatively low-level, some of these offenders would have committed more serious crimes in the past.

However, the LAO finds that less than one-quarter of the offenders that would be impacted by this proposal are third-strikers or have any prior violent offense. The LAO suggests that as an option for the Legislature to consider would be to exclude offenders with prior violent or sex offenses. This approach would reduce savings by \$150 to \$200 million annually upon full implementation.

Staff Comments. Staff recognizes that many local jurisdictions have acute overcrowding in existing jail facilities. Chapter 7, Statutes of 2007 (AB 900, Solorio) included \$1.2 billion in state funding to support the construction of additional local jail beds. The LAO has recognized that its recommendation to make “wobbler” crimes punishable as misdemeanors would have impacts on local jail facilities. To mitigate these effects the LAO has proposed accelerating the second phase of funding included in AB 900 for local jail construction.

3. Earned Discharge from Parole

LAO Proposal. The LAO recommends that a better alternative to the Governor’s summary parole proposal would be a system of earned discharge. As mentioned above, the LAO finds some merit in the Governor’s summary parole proposal, but has identified earned discharge as a preferable alternative. The LAO indicates that a system of earned discharge would permit parolees to be discharged from parole early if they had demonstrated that they had successfully reintegrated in the community. The LAO recommends that the earned discharge requirements be set in statute, but does not make specific recommendations on what statutory criteria should be used. The LAO indicates that a risk assessment could also be used to determine each offender’s discharge period.

The LAO indicates that budget savings related to a new earned discharge proposal could vary greatly, depending on the criteria set by the Legislature and or the implementation by the administration. However, the LAO estimates that if earned discharge were available for all parolees, except for those offenders with current or prior violent or sex offenses, the savings could exceed \$100 million annually at full implementation. The LAO admits that the earned discharge policy even when applied to a broader segment of the parolee population would still result in savings of one-third or one-half of the amounts that could be generated under summary parole.

The LAO finds that the policy of earned discharge would provide more accountability for offenders and, consequently, improve public safety outcomes. The LAO further notes that the earned discharge policy is consistent with recommendations made by the Expert Panel in the report released in 2007.

Administration Has Authority to Implement Earned Discharge. Current law allows the department to implement a system of earned discharge from parole. Statute only sets three-years as the maximum parole term and the Board of Parole Hearings may determine that an offender be discharged from parole before the parole term expires.

Budget savings were adopted as part of the 2007 Budget Act to reflect the administration’s implementation of a 12-month clean time discharge policy. Under this policy the administration

is currently discharging certain offenders from parole if they have 12 months of continuous clean time while on parole. Furthermore, the department has developed plans to implement a system of earned discharge from parole on a pilot basis in the current year. However, the department reports that implementation of this pilot program has been delayed.

Expert Panel Also Recommends Earned Discharge. In 2006-07 the Legislature funded an effort to convene an Expert Panel made up of corrections officials and academics from around the country. This Expert Panel delivered a report to the Legislature in the late summer of 2007. The Expert Panel also recommended that California implement an earned discharge parole supervision strategy for all non-violent, non-serious, non-sex offenders. Specifically, the Expert Panel report recommended the following criteria for non-violent, non-serious, non-sex offenders:

- Low-risk to re-offend parolees could reduce six months off their periods of parole supervision if they actively engaged in community services, remained violation free, and completed all payments of victim restitution.
- Moderate-risk to re-offend parolees could be discharged from supervision if, at the end of 12 months, they have achieved stability in housing and employment, successfully completed all treatment requirements addressing their criminogenic needs, have maintained continuously violation-free parole, and have completed all payments of victim restitution.
- Higher-risk to re-offend parolees who are complying with their treatment requirements and who remain arrest-free for the first year could earn one month off their total parole supervision periods for each arrest-free month they have in the second year.

The Expert Panel recommended a system of earned discharge parole because it provides an incentive system that rewards desired behavior and encourages parolees to earn early discharges from parole. The Expert Panel finds that earned discharge is an evidence-based practice that reduces recidivism by motivating parolees to participate in their own supervision successes.

Other Options

1. Other LAO Options

Summary. Over the years, the LAO has developed other alternatives for reducing the prison population that in their analysis would have minimal impacts to public safety. This section summarizes several of these options.

Early Release for Non-violent Elderly Inmates. Under this option non-violent, non-serious inmates age 60 or older would be placed on parole early. Research shows elderly inmates are two or three times more expensive to incarcerate yet they have a high level of success on parole. In 2004-05 the LAO estimated that this option could save the state about \$11 million annually. Alternatively, the LAO indicated that the Legislature could also choose to place elderly inmates on home detention, which would reduce the annual savings by about \$2 million.

2. Other Expert Panel Recommendations

Summary. In 2006-07 the Legislature funded an effort to convene an Expert Panel made up of corrections officials and academics from around the country. This Expert Panel delivered a report to the Legislature in the late summer of 2007. This report included the following two recommendations related to population reduction:

- Reduce overcrowding in prison facilities and parole offices.
- Enact legislation to expand the state system of positive reinforcements for offenders who successfully complete their rehabilitation program requirements, comply with institutional rules in prison, and fulfill their parole obligations in the community.

The Expert Panel recommendation to develop a system of earned discharge from parole was discussed above, but this section includes additional information on the other recommendations made by the panel that relate to population reduction.

Earned Credits for Offenders that Complete Rehabilitation Programs. The CDCR currently provides *earned* credits to offenders: (a) who the CDCR assigns to conservation camps to fight fires and perform other prison jobs (Work Incentive Program) and (2) offenders who participate in the Bridging Educational Program. Offenders that complete other rehabilitation programs do not receive earned credits.

The Expert Panel recommended that California enact laws that would allow the CDCR to award earned credits to offenders who complete any rehabilitation program, such as substance abuse treatment or life skills development, in accordance with their behavior management plans. The Expert Panel finds that these credits would provide motivation for offenders to participate in and successfully complete assigned rehabilitation programs to earn reduced sentences. The Expert Panel notes that participation in evidence-based rehabilitation programs will reduce recidivism and result in improved public safety outcomes.

Replace Work Incentive Program Credits with Statutorily-Based Good Time Incentive Credits. California's Determinate Sentencing Law allows offenders to earn, with some exceptions, as much as a day-for-day "good time" rate (50 percent reduction), but only if they are able to receive Work Incentive Program credits. While most offenders are eligible to receive the day-for-day Work Incentive Program credits, because of program capacity limits, they cannot access the work programs. In most cases offenders are assigned to these work programs on a first-come first-served basis.

The Expert Panel recommended that California enact a law that would allow CDCR to grant good time credits to those offenders that comply with institutional rules in prison. These good time credits would provide motivation for prisoners to manage their behaviors in prison to earn reduced sentences.

Reduce Technical Parole Violations. The Expert Panel has also recommended that California enact legislation that restricts the use of incarceration in prison for technical parole violation to only those violations that are: (1) new felony convictions or (2) technical parole violations that are directly related to the offender's criminal behavior patterns, specific dynamic risk factors,

and behaviors that threaten public safety. The Expert Panel recommends that all other parole violations result in intermediate, community-based sanctions other than prison.

Currently, technical parole violations are determined by (1) California state law, (2) the Board of Parole Hearings, and (3) CDCR's Parole Division. All three of these entities base their parole violation sanctions on the seriousness of the violation and not on the offenders risk to re-offend. The Expert Panel thinks that both the seriousness of the violation and the offenders risk to re-offend should be considered in the development and implementation of structured sanctions for technical parole violators. The Expert Panel recommends that the sanctions developed address the offenders' criminogenic needs to improve public safety outcomes.